# STATE OF MICHIGAN

# COURT OF APPEALS

FRANK W. LYNCH & CO.,

Plaintiff-Appellee,

v

FLEX TECHNOLOGIES, INC., FLEX TECHNOLOGIES, LTD., and ONTARIO, INC.,

Defendants-Appellants.

UNPUBLISHED
February 24, 2004

No. 240989
Oakland Circuit Court
LC No. 90-393782-CK

Before: Owens, P.J., and Fitzgerald and Saad, JJ.

PER CURIAM.

In this protracted litigation, defendants appeal an order that awarded plaintiff mediation sanctions of $85,280, and statutory interest under 600.6013(5). We reverse and remand for further proceedings consistent with this opinion.

The pertinent facts and lengthy procedural history in this case are set forth in prior opinions. *Frank W Lynch & Co v Flex Technologies, Inc*, unpublished opinion per curiam of the Court of Appeals, issued October 22, 1996 (Docket No. 169747); *Frank W Lynch & Co v Flex Technologies, Inc*, unpublished opinion per curiam of the Court of Appeals, issued May 14, 1999 (Docket No. 203326); *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 580; 624 NW2d 180 (2001).

## I. Rate of Interest

Defendants claim that the trial court applied the wrong rate of interest to the mediation sanctions. Defendants maintain that plaintiff's claim is governed by MCL 600.6013(6) (fluctuating rate), not MCL 600.6013(5) (twelve percent interest on written instruments).[1] We agree.

[1] As the narrow statements in defendants' Questions Presented reflect, the parties do not currently dispute that plaintiff is entitled to mediation sanctions, and they do not challenge the amounts of attorney fees and costs awarded as mediation sanctions, or plaintiff's entitlement to some amount of interest on the mediation sanction award pursuant to the prejudgment interest (continued…)

Resolution of this issue requires our interpretation of the statutory interest provisions in MCL 600.6013. This Court reviews de novo legal questions of statutory interpretation. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 467-468; 633 NW2d 418 (2001).[2]

Our first question is which version of MCL 600.6013 governs the mediation sanction interest issue, the statute in effect at the time the circuit court entered its March 19, 2002, order granting plaintiff's motion for mediation sanctions, or the amended statute that became effective only days thereafter, on March 22, 2002. Plaintiff asserts that the amended § 6013 cannot retroactively apply in this case, because the action was filed before enactment of the statutory amendments, and the circuit court made its decision regarding the appropriate amount of prejudgment interest on the mediation sanctions before the effective date of the statutory amendments.

> [W]hen determining whether a statute applies retroactively, the intent of the Legislature controls. Generally, an amended statute applies prospectively "unless the Legislature has expressly or impliedly indicated its intention to give it retrospective effect." However, where the statute at issue is remedial or procedural in nature, the presumption of prospective application does not apply. [*Aztec Air Service, Inc v Dep't of Treasury*, 253 Mich App 227, 233; 654 NW2d 925 (2002).]
>
> "Statutes related to remedies or modes of procedure which do not create new or take away vested rights, but only operate in furtherance of a remedy or confirmation of rights already existing will, *in the absence of language clearly showing a contrary intention*, be held to operate retrospectively and apply to all actions accrued, pending or future, there being no vested right to keep a statutory procedural law unchanged and free from amendment." [*Ballog v Knight Newspapers, Inc*, 381 Mich 527, 533-534; 164 NW2d 19 (1969) (emphasis in original), quoting *Hansen-Snyder Co v General Motors Corp*, 371 Mich 480; 124 NW2d 286 (1963).]

Our courts have characterized the prejudgment interest statute as having a procedural and remedial nature. *Ballog*, *supra*, 381 Mich 529-530, 541; *Attard v Citizens Ins Co of America*,

---

(…continued)

statute, MCL 600.6013.

[2] As our Supreme Court stated in *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002):

> When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, "we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." [Citations omitted.]

237 Mich App 311, 319; 602 NW2d 633 (1999). In *Ballog*, our Supreme Court held that an amendment to MCL 600.6013, which changed the accrual date of prejudgment interest from the entry of the judgment to the time of the filing of a complaint, had retroactive effect and governed the calculation of interest with respect to a judgment on a complaint that the plaintiff had filed before the enactment of the statutory amendment: "We conclude the amendment related to remedies and modes of procedure and repeat . . . that 'in the absence of language clearly showing a contrary intention,' we hold the amendment 'be held to operate retrospectively and apply to all actions accrued, pending, or future.'" *Id*. at 541-542.

In addition to the procedural and remedial nature of the prejudgment interest statute, the Legislature expressly indicated its intent that the 2002 amendments should apply to certain cases filed before the effective date of the 2002 amendments:

> (1) Interest is allowed on a money judgment recovered in a civil action, as provided in this section . . . .
>
> * * *
>
> (5) *Except as provided in subsection (6),* for a complaint filed on or after January 1, 1987, but before July 1, 2002, if a judgment is rendered on a written instrument, interest is calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year compounded annually, unless the instrument has a higher rate of interest. In that case, interest shall be calculated at the rate specified in the instrument if the rate was legal at the time the instrument was executed. The rate shall not exceed 13% per year compounded annually after the date judgment is entered.
>
> (6) *For a complaint filed on or after January 1, 1987, but before July 1, 2002, if the civil action has not resulted in a final, nonappealable judgment as of July 1, 2002,* and if a judgment is or has been rendered on a written instrument that does not evidence indebtedness with a specified interest rate, interest is calculated as provided in subsection (8).
>
> * * *
>
> (8) Except as otherwise provided in subsections (5) and (7)[3] and subject to subsection (13),[4] for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action is calculated at 6-month intervals from the date of filing the complaint at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by

---

[3] Subsection (7) only applies to complaints filed after July 1, 2002.

[4] Subsection (13) applies only in certain tort actions in which the plaintiff has made "a bona fide, reasonable written offer of settlement."

> the state treasurer, and compounded annually, according to this section. Interest under this subsection is calculated on the entire amount of the money judgment, including attorney fees and other costs. The amount of interest attributable to that part of the money judgment from which attorney fees are paid is retained by the plaintiff, and not paid to the plaintiff's attorney. [Emphasis added.][5]

The Legislature plainly expressed within subsections (5) and (6) its intent that the amended statute apply to actions commenced between January 1, 1987 and July 1, 2002, that had not yet reached conclusion. In light of (1) the expressed legislative intent to apply the amended statute to complaints previously filed between 1987 and July 2002; and (2) the procedural and remedial nature of § 6013, we hold that the amended statute controls the calculation of interest in this case, which was commenced in 1990. *Ballog*, *supra*, 381 Mich 541-542.

Our next inquiry is which subsection controls the interest calculation here. After reviewing the record, we conclude that subsections (6) and (8) govern the calculation of interest on plaintiff's award of mediation sanctions because this action did not yield a "final, nonappealable judgment as of July 1, 2002." Subsection 6013(6). Plaintiff incorrectly argues that this Court's decision in *Frank W Lynch & Co v Flex Technologies, Inc*, unpublished opinion per curiam of the Court of Appeals, issued May 14, 1999 (Docket No. 203326) (*Lynch II*), which became binding when the Supreme Court granted leave only with respect to the SRCA holding of this Court's decision, constituted the final, nonappealable judgment in this case.

The term "final judgment" signifies "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment." Black's Law Dictionary (7th ed). This Court's 1999 decision that plaintiff was entitled to receive unpaid commissions through July 31, 1992, did constitute the ultimate conclusion regarding the precise period of defendants' liability when the Supreme Court denied leave to review that portion of this Court's decision. Clearly, however, this Court's decision did not "settle[] the rights of the parties and dispose[] of all issues in controversy, except for the award of costs." Black's Law Dictionary, *supra*. To the contrary, this Court's opinion remanded the case to the circuit court "for a determination of the additional commissions due under the contract" because no precise amount of applicable commissions had yet been presented.

The post-remand pleadings of the parties make clear that, by October 2000, the parties, who sought to avoid the necessity of further court involvement in the case, had on their own negotiated a settlement of the exact amount of commissions owed plaintiff through July 31, 1992, consistent with the letters attached as exhibits to defendants' brief on appeal. The record clearly reflects the parties' admission that their settlement agreement was never placed on the record or filed with the circuit court, and we located no final judgment within the circuit court's

---

[5] Though the current, amended versions of MCL 600.6013(1)-(4) contain grammatical changes from the predecessor statute, the Legislature did not alter the substance of these subsections, which apply to actions commenced before January 1, 1987.

file or docket entries that incorporated a final disposition of the precise extent of the parties' rights and obligations regarding the unpaid commissions.

Plaintiff labels the circuit court's March 19, 2002, order as the final judgment entered in this case. While this order correctly states the amount of plaintiff's principal recovery as $197,942 and assigns the applicable interest rate of twelve percent on this principal amount "from the date of the filing of the complaint until paid," the order offers no calculation of a specific total amount of principal and interest that defendants must pay plaintiff. Even assuming for the sake of argument that the nonspecific order constituted a final judgment, the March 19, 2002, order did not qualify as "nonappealable," as evidenced by this Court's July 26, 2002, order peremptorily reversing the March 19, 2002, order "to the extent that it recalculates the interest owed to plaintiff."

Because plaintiff filed its complaint in 1990 and no final, nonappealable judgment determining the precise extent of defendants' principal and interest obligations existed as of July 1, 2002, MCL 600.6013(6) governs the calculation of interest on the amount of plaintiff's mediation sanctions in this case.[6] Subsection (6) states that "interest is calculated as provided in subsection (8)," which describes the applicable interest rate as "1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1 . . . compounded annually." Subsection (8) further expressly sets forth its applicability to "the entire amount of the money judgment, *including attorney fees and other costs*." (Emphasis added). Therefore, the circuit court erred by awarding plaintiff interest on the amount of its attorney fees and costs representing mediation sanctions pursuant to subsection (5), instead of subsection (6).

## II. Accrual of Interest

Defendants also argue that the interest accrues from the date the trial court awarded the mediation sanctions, rather than the date plaintiff filed the complaint. Based on the plain language of MCL 600.6013(8), interest, "including attorney fees and other costs" accrues "from the date of filing the complaint." In the recent case of *Morales v Auto-Owners Ins Co*, 469 Mich 487; 672 NW2d 849 (2003), our Supreme Court rejected defendants' argument that, because the statute is intended to compensate the prevailing party for periods of undue delay caused by the other party, interest should accrue from the date of the award. As the *Morales* Court held, the language of MCL 600.6013(8) is clear and unambiguous. Interest is calculated from the date the

[6] The parties do not dispute that plaintiff is entitled to commissions on the basis of a written contract between the parties that did not "evidence indebtedness with a specified interest rate." Subsection (6). Although subsection (5) also applies to actions filed between January 1, 1987 and July 1, 2002 in which "a judgment is rendered on a written instrument," the Legislature expressly exempted the applicability of subsection (5) when a case fell within the scope of subsection (6), as this case does.

complaint is filed and we will not read an exception into the statute that is contrary to the plain language employed by the Legislature.[7]

For the reasons stated, we reverse the trial court's decision to award interest on plaintiff's mediation sanctions pursuant to MCL 600.6013(5), and remand to the circuit court for entry of a final judgment incorporating an amount of interest on the award of mediation sanctions from the date of the filing of plaintiff's complaint pursuant to MCL 600.6013(6) and (8). We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad

[7] We note that defendants' cited cases, *Pinto v Buckeye Union Ins Co*, 193 Mich App 304; 484 NW2d 9 (1992) and *Wayne-Oakland Bank v Brown Valley Farms, Inc*, 170 Mich App 16; 428 NW2d 13 (1988), were issued before April 1, 1994, the effective date of 1993 PA 78, which amended then subsection (6) to expressly provide that the fluctuating interest rate is to be calculated from the filing date of the complaint *on the entire judgment, including amounts of costs and attorney fees*. See *Schellenberg v Rochester, MI, Lodge No 2225 of the Benevolent & Protective Order of Elks of the USA*, 228 Mich App 20, 50-52; 577 NW2d 163 (1998).